

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1612 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA****Sd/-**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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J M DAVE - Petitioner(s)

Versus

COMMISSIONER OF FISHERIES - Respondent(s)

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Appearance :

MR AS SUPEHIA for Petitioner(s) : 1,
MS RITA CHHANDARANA- Ld. AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/02/2006

ORAL JUDGMENT

1. Although by its title, the petition is invoking Articles 14, 226 and 227 of the Constitution, it is, in fact and in effect, challenging the order dated 6.7.2005 of the Gujarat Civil Services Tribunal in Appeal No. 319 of 2001, whereby the order dated 25.5.2001 of punishment

made against the petitioner was confirmed and the appeal of the petitioner was rejected. That appeal was the second round of litigation before the Tribunal after the judgment and order dated 20.2.2001 whereby the appeal against the original order of punishment was partly allowed and the matter was remanded for reconsideration.

2. There is no dispute about the fact that, after the petitioner being granted an opportunity of being heard, the order dated 25.5.2001 was made. Thus, in short, the original order dated 1.12.1998 imposing punishment of stoppage of one increment with future effect is the order against which the petitioner has been taking up one after the other proceedings. The objections now sought to be agitated against the second order dated 25.5.2001 which was confirmed by the Tribunal, are that even after a direction to give to the petitioner an opportunity of being heard and the petitioner having actually been heard in April, 2001 by an officer, namely Mr. P.K. Parmar, the Commissioner of Fisheries, the order came to be signed and issued by another Commissioner, namely Mr. N.A. Vora. It was, on that basis, argued that the officer who heard the petitioner had not passed the order and that violated the principles of natural justice. Another argument was that, even as the enquiry officer had exonerated the petitioner and the disciplinary authority had taken a different view, the petitioner was not granted an opportunity of being heard before the disciplinary authority decided to differ for the reasons which were for the first time disclosed in the order of punishment.

3. The charges levelled on 1.3.1995 against the petitioner, in substance, were that, after his transfer by the order dated 6.6.1992 and after being relieved on 23.6.1992, he had gone on leave on the ground of sickness and never reported for duty. Therefore, he was accused of being absent without leave which amounted to lack of sincerity and integrity in the discharge of his duties. The enquiry officer concluded in his report that the petitioner was on leave even before the date of his transfer and, therefore, it could not be said that he had gone on sick leave because of the transfer. It was also recorded by the enquiry officer that since the petitioner had applied for leave on the basis of the medical certificates and no order granting or refusing leave was issued, his absence from duty could not be held to be authorized or unauthorized.

4. Not only that the findings of the enquiry officer are obviously perverse but the contentions canvassed by the learned counsel before this Court have been examined in detail in the impugned order dated 6.7.2005 of the Civil Services Tribunal. It was seen from the detailed discussion in the impugned judgment of the record of absence and the reasons thereof cited by the petitioner that the petitioner had consciously and ingeniously continued his misrepresentation of sickness and made efforts to have his transfer revoked and adamantly avoided to report for duty at the place of transfer. No sooner he was suspended on 8.2.1995, after about 3 years of absence from duty, he reported for duty

with a certificate of fitness on 9.2.1995. Thus, the punishment and the consequences of his misbehaviour, defiance and undeniable misconduct were practically invited by the petitioner and seen in that perspective the order of punishment of only stoppage of one increment was too lenient.

5. The principles of natural justice are not codified with a view to ensure fair-play and opportunity of hearing without making the proceedings too technical and so cumbersome as to defeat the ends of justice.

It is observed as under by the Supreme Court in **K.L.TRIPATHI v. STATE BANK OF INDIA [AIR 1984 SC 273]** :

"41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed."

In MANAGING DIRECTOR, ECIL, HYDERABAD v. B. KARUNAKAR [AIR 1994 SC 1074] (in para 6), relying upon the earlier judgment in **A.K. Kraipak v. Union of India [AIR 1970 SC 150]**, it is observed that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. It is also observed that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions.

It is also held by the Apex Court in **STATE BANK OF PATIALA v. S.K. SHARMA [AIR 1996 SC 1669]** that, except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provisions should be examined from the point of view of prejudice, viz. whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If no prejudice is established to have resulted therefrom it is obvious, no interference is called for.

The following observations of the Supreme Court in **OSSEIN AND GELTINE MANUFACTURERS' ASSOCIATION OF INDIA v. MODI ALKALIES AND CHEMICALS LTD. [AIR 1990 SC 1744]** are also apposite in the facts of the present case:

"On the issue of natural justice, we are satisfied that no prejudice has been caused to the appellant by any of the circumstances pointed out by the appellant. It is true that the order has been passed by an officer different from the one who heard the parties. It has not been brought to our notice that any salient point urged by the

petitioners has been missed. On the contrary, the order itself summarises and deals with all the important objections of the petitioners. This circumstance has not, therefore, caused any prejudice to the petitioners...."

6. In the facts of the present case, the charges of acts of misconduct and facts are so clear that it would have been difficult to reach a different conclusion and, as discussed in the impugned judgment, the final order dated 25.5.2001 had come to be signed by different officer in the extraordinary circumstances of death of the mother of the officer who had heard the petitioner and even dictated the order. As seen earlier, this petition has come up before this Court after adjudication by a judicial forum having jurisdiction over the matter and, therefore, it could only be and it is entertained as a petition exclusively under Article 227 of the Constitution and, having regard to the limitations on exercise of supervisory jurisdiction and there being no jurisdictional error and there being no injustice, except that the punishment was ridiculously lenient, and still repeatedly carried to the Courts, the petition is dismissed in limine.

Sd/-

(D.H. WAGHELA, J.)

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